

BEFORE THE  
SURFACE TRANSPORTATION BOARD

234650  
ENTERED

CARGILL, INC. *et al.*

Complainants,

v.

ABERDEEN AND ROCKFISH RAILROAD  
COMPANY, *et al.*

Defendants.

Office of Proceedings  
August 8, 2013  
Part of  
Public Record

Docket No. NOR-42117



GRANTED

Office of  
Proceedings

DECISION ID NO.: 43315  
DECIDED DATE: 8/29/13  
SERVICE DATE: 8/30/13  
APPROVED: Rachelle Campbell  
Director

MOTION TO DISMISS

Complainants<sup>1</sup> have reached a voluntary settlement with most Defendants<sup>2</sup> of the matters

at issue in this proceeding. Complainants do not desire to continue this proceeding against the remaining Defendants who are not parties to the settlement. The settlement does not implicate, or otherwise require, modifications to the calculation and assessment of tank car mileage equalization charges pursuant to Ex Parte No. 328, *Investigation of Tank Car Allowance System*, 3 I.C.C.2d 196 (1986), or Freight Tariff RIC 6007-Series. Accordingly, Complainants request that the Board:

<sup>1</sup> Cargill, Inc., E.I. du Pont de Nemours and Company, Exxon Mobil Corporation, Jones-Hamilton Co., PPG Industries, Inc., Reagent Chemical and Research, Inc., and Taminco Methylamines, Inc.

<sup>2</sup> The following Defendants are parties to the voluntary settlement: Aberdeen and Rockfish Railroad Company; Baltimore and Ohio Chicago Terminal Railroad Company; BNSF Railway Company; Boston and Maine Corporation; Buffalo and Pittsburgh Railroad, Inc.; Canadian National Railway; Canadian Pacific Railway; Cedar Rapids and Iowa City Railway Company; Central Washington Railroad Company; CSX Transportation Inc.; Elgin, Joliet and Eastern Railway Company; Gary Railway Company; Indiana & Ohio Railway Company; The Kansas City Southern Railway Company; Maine Central Railroad Company; Montana Rail Link, Inc.; New York, Susquehanna and Western Railway Corp.; Norfolk Southern Railway Company; Pan Am Railways Inc.; Portland Terminal Company; Rochester and Southern Railroad, Inc.; Springfield Terminal Railway Co.; Union Pacific Railroad Company; the Association of American Railroads; and Railinc Corp.

(1) dismiss with prejudice all claims of Complainants and the Intervenor, North American Freight Car Association ("NAFCA"), for reparations of mileage equalization charges that accrued in any period prior to January 1, 2011;

(2) dismiss with prejudice all claims of Complainants and NAFCA for other relief relating to mileage equalization charges during the period prior to January 1, 2011; and

(3) dismiss without prejudice all remaining claims and requests for relief asserted by Complainants and NAFCA.

Counsel for NAFCA has authorized Complainants to represent that NAFCA concurs in this Motion to Dismiss.

Respectfully submitted,



Jeffrey O. Moreno  
Thompson Hine LLP  
1919 M St. N.W.  
Suite 700  
Washington, D.C. 20036  
(202) 331-8800

August 8, 2013

## CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Motion to Dismiss to be served this 8th day of August 2013:


1. By email:

David T. Ralston Foley & Lardner LLP 3000 K Street, N.W. Sixth Floor Washington, DC 20007-5109 dralston@foley.com <i>Counsel For Cedar Rapids and Iowa City Railway Co.</i>	Michael Rosenthal Covington & Burling LLP 1201 Pennsylvania Avenue, N.W. Washington, DC 20004-2401 mrosenthal@cov.com <i>Counsel For Association of American Railroads Railinc, Corp. BNSF Railway Co. Canadian National Railway Co. Canadian Pacific Railway Co. CSX Transportation, Inc. Gary Railway Co. Norfolk Southern Railway Co. The Kansas City Southern Railway Co. Union Pacific Railroad Co.</i>
Eric M. Hocky Thorp Reed & Armstrong, LLP 2005 Market Street, Suite 1000 Philadelphia, PA 19103-7041 ehocky@thorpreed.com <i>Counsel for: Aberdeen and Rockfish Railroad Co., and New York, Susquehanna and Western Railway Corp.</i>	Thomas W. Wilcox Andrew P. Goldstein GKG Law, P.C. 1054 31 <sup>st</sup> Street, N.W. Suite 200 Washington, DC 20007-4492 twilcox@gkglaw.com <i>Counsel for: North American Freight Car Association</i>
Mark H Sidman Transport Counsel PC 1701 Pennsylvania Ave., N.W. Suite 300 Washington, DC 20006 msidman@transportcounsel.com <i>Attorney for: Central Washington Railroad Company Montana Rail Link, Inc.</i>	Louis E. Gitomer The Adams Building, Suite 301 600 Baltimore Avenue Towson, Maryland 21204-4022 lou_gitomer@verizon.net <i>Attorney for: Indiana and Ohio Railway Company</i>

Robert B. Burns Pan Am Railways 1700 Iron Horse Park North Billerica, MA 01862 rburns@panamrailways.com <i>Attorney for: Boston and Maine Corporation</i> <i>Maine Central Railroad Company</i> <i>Pan Am Railways, Inc.</i> <i>Portland Terminal Company</i> <i>Springfield Terminal Railway Co.</i>	
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2. The following parties have been served by first class mail:

Cindy Sanborn President Baltimore and Ohio Chicago Terminal Railroad Company c/o CSX Transportation Inc. 500 Water Street Jacksonville, FL 32202	Daniel R. Sabin President Iowa Northern Railway 122 North 2nd Street P.O. Box 640 Greene, IA 50636
Elgin, Joliet and Eastern Railway Company c/o Sean Finn Executive Vice President Corporate Services, and Chief Legal Officer Canadian National Railway 935 de La Gauchetiere St. West, Montreal, QC H3B 2M9	David Collins 200 Meridian Centre Blvd; Suite 300 Rochester, New York 14618 <i>For Buffalo and Pittsburg Railroad Inc.</i> <i>Rochester and Southern Railroad, Inc.</i>

  
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Jeffrey O. Moreno